

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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| In the Matter of |) | |
| |) | |
| Acceleration of Broadband Deployment |) | WC Docket No. 11-59 |
| Expanding the Reach and Reducing the Cost of |) | |
| Broadband Deployment by Improving Policies |) | |
| Regarding Public Rights of Way and Wireless |) | |
| Facilities Siting |) | |

COMMENTS OF *RICHMOND, VIRGINIA*

Richmond, Virginia files these comments in response to the Notice of Inquiry (“NOI”), released April 7, 2011, in the above-entitled proceeding. Through these comments, Richmond, Virginia seeks to provide the Commission with basic information regarding its local right-of-way and facility management practices and charges.¹ The Commission should not interfere with these local policies here. Richmond, Virginia has developed considerable expertise applying its policies to protect and further public safety, economic development, and other community interests. By adopting rules in this area, the Commission could disrupt this process at substantial cost to local taxpayers and to the local economy. We believe that a basic respect for federalism, a fair reading of the Constitution and the Communications Act, and an honest assessment of the Commission’s limited expertise on local land use matters all point to the same conclusion: this is no place for federal regulation.

¹ We use the term “charges” to include both any cost recovery that is part of right-of-way and facility management (such as permitting fees), as well as other compensation we may receive from communications companies for use of the rights-of-way and other facilities consistent with state and local law.

Richmond, Virginia has encouraged and continues to encourage the deployment of broadband and associated infrastructure upgrades to improve service to both residents and businesses. For example, the City currently has 124 separate lease agreements for telecommunication infrastructure, 45 of which are located on city property. The City recognizes that increased access to broadband positively influences the quality of life of our residents and the competitiveness of our businesses.

Richmond, Virginia has successfully managed its property to encourage deployment of several broadband networks to date. As a result, broadband service is available to almost all of the households and businesses in our jurisdiction (according to the Virginia Office of Telework Promotion & Broadband Assistance online Virginia Broadband Viewer). There is no evidence that our policies or charges with respect to placement of facilities in the rights-of-way or on City property (such as water towers) have discouraged broadband deployment. Our community welcomes broadband deployment, and our policies allow us to work with any company willing to provide service. No company has cited our policies as a reason that it will not provide service. We believe our policies have helped to avoid problems and delays in broadband deployment by ensuring that broadband deployment goes smoothly for both the providers who follow the rules and the larger community. The City has franchise provisions in place which allows for a smooth broadband deployment process. Relatively recently adopted state laws require the City to grant the same cable franchise rights to all incoming providers and some additional benefits. If the provider meets certain criteria, the City cannot deny the franchise rights to the provider. See Va. Code 15.2-2108.21.

On the other hand, we also know that many entities seeking access to our rights-of-way and facilities would prefer to live without rules or regulations, to the great detriment of other

users, abutting landowners, commuters, and the general taxpayer. Richmond, Virginia adopted general terms and conditions for ordinance cable franchises. Richmond, Virginia awarded two such franchises, one to Comcast and one to Cavalier. In addition, the City negotiated a cable franchise agreement with Verizon. Richmond, Virginia included build-out provisions within the contract to encourage the deployment of broadband service for cable as comprehensively and as quickly as possible. Richmond, Virginia has followed the mandates outlined in the Commonwealth of Virginia's enabling legislation.

In response to the NOI, Richmond, Virginia provides the following information:

I. Application Procedures, Forms, Substantive Requirements, and Charges.

The Commission asks whether all necessary application procedures, forms, substantive requirements, and charges are readily available.²

Richmond, Virginia applies the following right-of-way management and facility placement procedures. The normal process for utility distribution infrastructure within the right of way is to obtain an Administrative Encroachment. An alternate process is to obtain a franchise agreement with the City. Franchise agreements are typically entered into with larger distributors for whom the long term benefit of having an agreement in place outweighs the time and effort involved with negotiating an agreement. The use of City facilities or City owned property for utility distribution infrastructure is not handled by the same staff that administers the right of way. Non-building mounted distribution infrastructure facilities on City property other than right of way would require the granting of an easement to the applicant.

II. Sources of Delays.

² NOI ¶ 14.

The Commission asks what factors are chiefly responsible to the extent applications are not processed in a timely fashion. The Commission also asks about errors or omissions in applications.³

In Richmond, Virginia, most applications are processed very quickly. All applicants for any activity within the City right of way are encouraged to come in for a pre-application meeting so that they may be given a briefing on the materials required to process an application (both for an encroachment and for a permit to construct) in general and specifically for their activity and location. This minimizes delays in permit processing. On larger infrastructure projects such as new fiber optic lines, we will look over the entire project prior submittal of the application to work out as many of the potential problems as possible before the permit is submitted.

III. Improvements.

The Commission asks whether there are particular practices that can improve processing.⁴

Richmond, Virginia has recognized a number of practices that have improved the process. For example the City has a Utility Coordination Planning Committee through which City Right of Way Management Engineers meet bi-monthly with all major utility companies in order to provide a forum of discussion with regards to construction within the public right of way. This forum promotes an atmosphere of coordinating projects together in order to minimize traffic disruptions, multiple street cuts, as well as information sharing on soil conditions and excavation requirements. The City also recognizes that the permit management and tracking

³ *Id.*

⁴ NOI ¶¶ 14, 29.

software currently in use (Cornerstone) is out of date and hinders the ability of staff from various reviewing departments to exam Work in Streets Permits simultaneously. Updated software will help in coordinating review comments to minimize the need for repetitive re-submittals of plans.

IV. Permitting Charges.

The Commission seeks data “on current permitting charges, including all recurring and non-recurring charges, as well as any application, administrative, or processing fees.” Specifically, the Commission asks commenters to identify:

- the type of facilities for which such charges are assessed;
- how such charges are structured (e.g., per foot or percent of revenue in the case of rights of way fees);
- whether the community is subject to comprehensive state franchising or rights-of way-laws;
- whether the charges are published in advance or individually negotiated, designed to approximate market rates or merely recover costs (direct and/or indirect), and accompanied by comprehensive terms, and conditions; and
- the value of any in-kind contributions required for access or permit approval.

The Commission further asks whether such charges are related to impacts on the local community, such as pavement restoration costs for projects that involve trenching in roadways.⁵

In Richmond, Virginia, the type of facilities for which permitting charges are assessed include any private facilities within the public right of way, unless the owner of the facilities has a franchise agreement. These charges are published on the City’s website and are structured as follow: the application fee for administrative encroachment is \$300; the assessment fee for encroachment is \$0.25 per square foot (or linear foot for cables) yearly; and the fee for Work in

⁵ NOI ¶ 17.

Streets Permit (WISP) is up to \$40. Richmond, Virginia is subject to Virginia ordinance on cable franchisees (15.2-2108.21) which states that an ordinance cable franchise may be sought by a certified provider and outlines the timeframe for ordinance adoption. However, the City develops specific franchise agreements directly with telecommunication distributors. Additionally, the City owns rights of way within its jurisdiction and is subject to Virginia Department of Transportation (VDOT) right of way regulations regarding right of way dimension in order to receive revenue from VDOT. With respect to any in-kind contributions required for access or permit approval, the City requires that when a distributor places a duct bank into the City right of way that they install one extra duct to allow for others to run cables without the need to dig up the street again. This minimizes costs to future providers and also minimizes destruction and disruption on City streets. Finally, permitting charges are not directly related to impacts on the local community.

These charges are important because they are used to offset a portion of processing costs associated with permits and conducting inspections.

V. Local Policy Objectives.

The Commission asks what “policy goals and other objectives” underlie the local practices and charges in this area.⁶

In Richmond, Virginia, our policies are designed to achieve the following:

- facilitate the responsible deployment of services
- make the services broadly available
- ensure public safety
- avoid traffic disruption

⁶ NOI ¶ 22.

- maintain and repair roadways
- prevent public disruption and damage to abutting property
- minimize accelerated deterioration to roads that accompanies street cuts
- satisfy aesthetic, environmental, or historic preservation concern
- avoid damage to the property of others

VI. Possible Commission Actions.

Finally, the Commission asks what actions the Commission might take in this area.⁷

As noted above, Richmond, Virginia strongly urges the FCC to refrain from regulating local right-of-way management and facility placement processes. These are highly fact-specific matters, which turn on local engineering practices, local environmental and historical conditions, local traffic and economic development patterns, and other significant community concerns and circumstances. These matters are managed by local staffs with considerable expertise. Imposing a federal regulatory regime would create unnecessary costs for our community, and it would have the potential to undermine important local policies. Likewise, Commission regulation of charges for use of the rights-of-way could have significant impacts on the community, and may actually make it infeasible to continue to maintain or provide important public services, such as providing free Internet access at public libraries. If the Commission feels compelled to act in this area at all, it should limit itself to voluntary programs and educational activities, and to implementing its own recommendations in the National Broadband Plan for working cooperatively with state and local governments.

⁷ NOI ¶ 36.

CONCLUSION

Richmond, Virginia urges the Commission to conclude that right-of-way and facility management and charges are not impeding broadband deployment. As indicated above, in Richmond, Virginia, our policies and procedures are designed to protect important local interests, and have done so for many years. There is no evidence that the policies have impaired any company from providing broadband service here, and there are many reasons to believe that federal regulations would prove costly and disruptive to our community.

Respectfully submitted,

Richmond, Virginia

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